

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 678 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)**Versus****BHANVARLAL AMBALAL SHAH & 1 - Opponent(s)**

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Appearance :

MR HL JANI APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 29/11/2007****ORAL JUDGMENT**

1.0 This appeal is directed against the judgment and order dated 27.03.1996 passed by the learned Judicial Magistrate First Class, Mansa in Criminal Case No. 292 of 1994 whereby, both the

respondents – accused persons were acquitted from the charges leveled against them.

2.0 The brief facts of the prosecution case are as under;

2.1 On 10.09.1993 the Food Inspector of the appellant – State visited the shop of respondent no. 2 during which time respondent no. 1 was present. After completing necessary formalities, a sample of Mustard Oil was collected in the presence of '*panchas*', after making necessary payment towards the same. One such sample was then sent to the Analyst for examination.

2.2 On examination, the sample was found to be adulterated. Therefore, a complaint with respect to the aforesaid offence was filed against the respondents and, ultimately, trial was conducted. In order to prove the guilt against the respondents, the prosecution has examined the complainant – Rajendrakumar Jayantilal Pandya as PW – 1 at Exhibit – 18 and the 'panch' witness at Exhibit – 44 and has also relied upon several documentary evidence. At the end of trial, the learned Magistrate acquitted the respondents of the charges leveled against them. Hence, this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been

very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In the case of ***M. S. Narayana Menon @ Mani v. State of Kerala & anr.*** reported in ***(2006) 6 S.C.C. 39***, the Apex Court has narrated about the powers of this Court in appeal against the order of acquittal. In para – 54 of the decision, the Court has observed as under;

“54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.”

5.0 Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with”.

[*Emphasis supplied*]

6.0 Similar principle has been laid down by the Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

7.0 In the impugned order, the trial Court has recorded a finding of fact that the 'panch' witness has not supported the case of the prosecution inasmuch as the evidence led by the 'panch' witness at Exhibit – 44 has not supported the evidence led by the

complainant. Apart from that it has also come on record that the sample so collected was not collected after following due procedure as prescribed under the Prevention of Food Adulteration Act. It is a settled principle that if the sample is not collected as per the procedure prescribed under the law, then the same shall vitiate the trial. Considering the facts of the case, it would be relevant to refer to a decision of this Court in the case of ***Laxmichand Bhailal Thakker v. State of Gujarat*** reported in ***1995 (2) G.L.R. 1528*** wherein it has been held that the provisions of Sections 7 & 16 of the Prevention of Food Adulteration Act, 1954 and Rule 4 of the Prevention of Food Adulteration Rules, 1955 are mandatory and that the seal on the sample must be compared with the specimen seal and the failure to do so vitiates the trial.

8.0 In above view of the matter and in view of the principle laid down in *Laxmichand Bhailal Thakker's* case (supra), I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges leveled against them. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the

case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

“... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary* (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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